

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES**

IN RE APPEAL

OF: CYRLUK ET AL.

SERIAL NO. 10/728,793

FILED: DECEMBER 8, 2003

FOR: MODULAR COMPONENT HAVING STORE DISPLAY WITH
IMPROVED VERSATILITY, ADAPTABILITY AND COST
EFFECTIVENESS

ATTY DOCKET: 2281-105

CONFIRMATION NO.: 8926

GROUP ART UNIT: 3611

EXAMINER: HOGE, GARY CHAPMAN

Honorable Commissioner for Patents
Alexandria, Virginia 22313-1450

BRIEF ON APPEAL UNDER 37 C.F.R. §41.37

Sir:

This is an appeal from the Examiner's final rejection of Claims 1-12, 16-18 and 23, dated March 31, 2005. Claims 1-23 are currently pending in the application.

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REAL PARTY IN INTEREST:

The real party in interest is Issac Cyrluk.

RELATED APPEALS AND INTERFERENCES:

To the best of the undersigned's knowledge, there are no related appeals or interferences within the meaning of 37 C.F.R. §41.37(c)(1)(ii).

STATUS OF THE CLAIMS:

Claims 1-23 are pending in the current application.

- Claims 13-15 and 19-22 have been withdrawn from consideration.
- Claims 1-12, 16-18 and 23 stand rejected.

A copy of these pending claims is found in the attached Claims Appendix.

STATUS OF THE AMENDMENTS:

An amendment filed after final on October 5, 2005 was entered as indicated in the Advisory action of October 24, 2005.

SUMMARY OF THE CLAIMED SUBJECT MATTER:

The Appellant's invention relates to hanging store displays for providing product and service information to customers. As recited in claim 1, the display comprises:

- as can be seen, e.g., in Figs. 1(A) and 1(C), a base sheet (10) having a) at least one first side projection tab (11) along a first side of said base sheet and b) at least one second side projection tab (11) along a second side of said base sheet (10). See, e.g.,

Application, page 4, line 25 to page 6, line 9.

- as can be seen, e.g., in Figs. 2(A) and 2(C), a first frame member (20A or 20B) having a base-connection channel connectable with said at least one first side projection tab (11), wherein said first frame base-connection channel or said at least one first side projection tab are resilient and allow the at least one first side projection tab to snap-fit into said first frame base-connection channel. See, e.g., Application, page 6, line 11, to page 8, line 23.

- as can be seen, e.g., in Figs. 2(A) and 2(C) a second frame member (20A or 20B) having a base connection channel connectable with said at least one second projection tab (11), wherein said second frame base-connection channel or said at least one second

projection tab (11) are resilient and allow the at least one second projection tab to snap-fit into said second frame base-connection channel. See, e.g., Application, page 6, line 11, to page 8, line 23.

- as can be seen, e.g., in Fig. 2(E) information media can include indicia and/or graphics. See, e.g., Application, page 8, line 25, to page 9, line 28.

Claim 4 recites that, as can be seen, e.g., in Fig 4, the first and second frame members (20A and 20B) include media support channels (24) and said information media includes a display sheet supported within said media-support channels. See, e.g., Application, page 7, lines 10-15.

Claim 8 recites that, as can be seen, e.g., in Figs. 1(A) and 1(C), the base sheet (10) can be formed from plastic. See, e.g., Application page 4, lines 26-27.

Claims 9 and 11 recite that information media includes indicia and/or graphics formed directly on or in the base sheet. See, e.g., Application, page 9, lines 1-4.

Claim 10 recites that the base sheet can be formed from a natural and/or synthetic paper. See, e.g., Application page 4, lines 26 to page 5, line 2.

Claim 17 recites that the information displayed can be modified by replacing the base sheet with a base sheet having a different size or characteristic. See, e.g., Application, page 7, lines 7-9.

Claim 18 recites modifying the information displayed by replacing at least one of the frame members (20A and 20B) to support different or additional display elements or information media. See, e.g., Application, page 7, lines 5-7.

GROUND(S) OF REJECTION TO BE REVIEWED:

- I. Whether the Examiner erred in finding that the subject matter of Appellants' claims 1-7, 12, 16-18 and 23 was unpatentable under 35 USC §102 as being anticipated by **Gebhardt** (US 4,882,866).
- II. Whether the Examiner erred in finding that the subject matter of Appellants' claims 8-11 was unpatentable under §103(a) as being unpatentable over **Gebhardt**.

ARGUMENT(S):

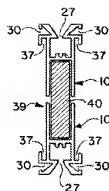
I. The Examiner's finding that Appellants' claims 1-7, 12, 16-18 and 23 are anticipated under 35 USC §102 is in error.

It is the Examiner's position that **Gerbhardt** discloses all the elements in the claims of the current invention. The Examiner alleges that **Gerbhardt** discloses a base sheet **45** with at least one projection tab **46** on a first and second side of the base sheet. The Examiner further states that **Gerbhardt** discloses a first frame member **24** having a base-connection channel **30**, where the projection tab **46** snap-fits into the channel **30**. The Examiner also alleges that a second frame member **24** has a base channel **30**, where the projection tab **46** snap-fits into the second base connection channel **30**. The Examiner also argues that there is information media including indicia and/or graphics.

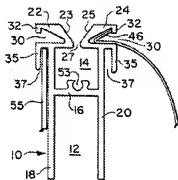
However, the Examiner's interpretation of the **Gerbhardt** disclosure is plainly inaccurate.

Anticipation under §102 can be found only if a reference shows exactly what is claimed. See Titanium Metals Corp. v. Banner, 778 F.2d 775, 227 USPQ 773 (CAFC 1985). The identical invention must be shown in as complete detail as is contained in the patent claim. See Richardson v. Suzuki Motor co., 868 F.2d 1226, 9 USPQ2d 1251, 9 USPQ2d 1913 (CAFC 1989). In order to anticipate, a reference must have sufficiently described the claimed invention to place the public in possession of it. See Minnesota Mining & Manufacturing Co. v. Johnson & Johnson Orthopaedics, Inc., 976 F.2d 1559, 1572, 254 USPQ2d 1321 (CAFC 1992). Furthermore, the elements must be arranged as in the claim under review. See In re Bond, 910 F.2d 831, 832-33, 15 USPQ2d 1566 (CAFC 1990).

In the case at hand, **Gerbhardt** does **not** identically disclose the elements of the current invention arranged as they are in the current claims. Among other things, **Gerbhardt** does not disclose projection tabs which snap-fit into the frame base-connection channels as required by the current claims. **Gerbhardt** discloses a support structure comprised of a pair of channel members (10) connected together by a connecting element (40) inserted into the medial grooves (12) of each channel member. See **Gerbhardt**, Fig. 2; column 3, lines 17-38. In that regard, Fig. 2 of **Gerbhardt** is depicted as follows:

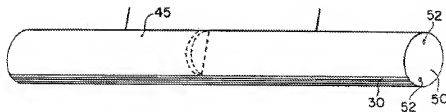


An arcuate element (45) having a return bend (46) is slid into the outwardly facing grooves 30, and can be seen as follows:



See **Gebhardt**, Fig. 2; column 3, lines 62-68.

In this regard, both Figs. 1 and, as shown above, are end views of the disclosed apparatus. However, as can be seen in Fig. 3 of **Gebhardt**, the arcuate elements, return bends, channel members and support are all elongated in a longitudinal direction forming a tube like structure:



It is important to understand that the **Gebhardt** reference does **not** disclose a snap-fit connection. What is disclosed is that the return bend (46), and there fore the arcuate element (45), slides laterally into the grooves (30), as stated in **Gebhardt** column 3, lines

63-65, “the return bend [is] **slid** into outwardly facing grooves.” Emphasis added. Thereafter, the next sentences explain that the cover plates (50) are fastened onto the end as can be seen in Fig. 3 above. From this then, it can be seen that the arcuate element (45) is not snapped fit, but **slid** in laterally from the side, and then caps are placed on the ends to retain the arcuate element.

Notably, it would be rather difficult to snap-fit such an elongated member as the return bend (46). In this regard, it should be appreciated that it can be rather difficult to snap fit two elongated members together. There is no reason to assume that such a difficult snap-fit connection is contemplated, nor that the arcuate element (45) is flexible enough to be squeezed by a person’s hands and then pushed lengthwise into the grooves (30). This would not only be contrary to the mechanical design of the apparatus and the disclosure which indicates the elements are slid into place, but it would be a somewhat complex feat to achieve.

Therefore, **Gebhardt** does not disclose a snap-fit function or structure. Consequently, **Gebhardt** does not identically disclose the claims of the current invention. Accordingly, Applicant requests that the §102 rejections be withdrawn.

Furthermore, claim 1 recites “indicia and/or graphics upon said base sheet.” The Examiner has incorrectly asserted that the arcuate element 45 includes indicia or graphics. There is **no** disclosure to that effect. There is no depiction in any figure thereof, nor any description thereof. The reference is silent as to what the arcuate element (45) should include.

With regard to claim 4, the Examiner alleges that channels **30** of **Gebhardt** comprise media-support channels. However, this is contrary to the disclosure of **Gebhardt** and the meaning of the current claims. As stated earlier, claim 4 specifies that the first and second frame members include media-support channels with a display sheet supported therein. Therefore, according to claim 4, media-support channels are **different** from the base-connection channels of claim 1. The Examiner incorrectly interprets a single element to read on two separate elements. Furthermore, the display sheet in claim 4 is different feature from the base sheet in claim 1. This can be seen in Fig. 4 of the current Application where a placard (31), serving as a display sheet, is supported in the channels 24. See Application, Fig.4 and page 7, lines 12-13.

Erroneously, the Examiner first argues that element **30** in **Gebhardt** (see Fig. 1-2 above) are base-connection channels in the Office action on pages 2-3 and holds a base sheet. The Examiner then argues that element 30 is a media-support channel, which is intended to hold a display sheet. Element 30 cannot be both a base-connection channel and media-support channel in the disclosure of **Gebhardt**. Therefore, **Gebhardt** does not identically disclose the elements and limitations of claim 4.

With regard to claim 17, the Examiner alleges that the base sheet disclosed by **Gebhardt** is meant to be replaceable. However, this is in error. As discussed earlier, the arcuate element 45 is slid on, and then caps (50) are screwed on, or “securely engaged.” See **Gebhardt**, column 4, lines 1-3. Initially, while forming the apparatus of **Gebhardt**, the size may be affected, however, once formed, the fact that the cover is screwed or securely engaged indicates that the arcuate element 46 is not meant to be replaceable.

With regard to claim 18, the Examiner alleges that part 22 in Fig. 1 of **Gebhardt** (see Fig. 1 above) constitutes a means of supporting additional display elements. However, Claim 18 of the current invention specifies that the information displayed is modified by replacing at least one of the frame members to support different or additional display elements. The Examiner earlier argued that flange 24 of **Gebhardt** was a frame member. However, the Examiner does not indicate how this frame member can be replaced to support different or additional display elements, as per claim 18. In fact, **Gebhardt** nowhere discloses that the part 22 or flange 24 is replaceable in order to modify the information displayed. They merely are used for structural support to hold the arcuate element 45 in place. Therefore, the elements and limitations of claim 18 are not disclosed by the **Gebhardt** reference.

In light of the foregoing, the Applicant respectfully requests that the §102 rejection be withdrawn.

II. The Examiner's finding that Appellants' claims 8-11 are anticipated under 35 USC §103 is in error.

The Examiner took the position that although **Gebhardt** does not indicate what material is contemplated for the fabrication of the base sheet, it is still within the level of ordinary skill of a worker in the art to select from among known materials on the basis of their suitability for the fabrication of a given device, and that one of ordinary skill in the

art would know that plastic or paper would be suitable for the fabrication of the base sheet.

According to §103, in order to establish a prima facie case of obviousness, there must be (1) some suggestion or motivation to modify the references, (2) reasonable expectation of success and (3) the prior art reference must teach or suggest all of the claim limitations. See MPEP §2143.

As discussed above, **Gebhardt** does not teach or suggest the features recited in the claims from which these claims depend. Furthermore, contrary to the Examiner's assertion, "plastic" or "paper" would not have been obvious materials of choice for the arcuate element (45) as disclosed in **Gebhardt**.

The **Gebhardt** reference does not indicate what material the arcuate element (45) should be made from. The arcuate element (45) of **Gebhardt** is formed in an arc shape, and, therefore, is limited to materials for such a shape. Furthermore, the support structure 39 of **Gebhardt** involves a rather substantial, heavy structure employing two metal or the like channel members 10 (see column 3, lines 45+) that are connected together with a large "relatively rigid material" such as, e.g., wood (see column 3, lines 55-56). Accordingly, the heavy support structure suggests that the arcuate element 45 would have a substantial weight, and would likely be metal. Therefore, there is clearly no motivation for one of ordinary skill in the art to employ the elements of the current claims.

Moreover, the structure taught by **Gebhardt** would likely operate most effectively using a metal structure, which would easily laterally slide into the channel as disclosed. There is no teaching or suggestion that the **Gebhardt** structure could be fabricated from a lighter, typically flimsier, material such as paper or plastic, much less any reason or rationale provided in the reference to lead one to such other materials.

In light of the foregoing, the Applicants respectfully request that the §103 rejections be withdrawn.

CONCLUSION

For the foregoing reasons, Appellants' respectfully urge that the Examiner erred finding the subject matter defined in claims 1-7, 12, 16-18 and 23 is anticipated by **Gebhardt** under 35 USC §102(b) and claims 1-8 are rendered obvious over **Gebhardt**

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under 35 USC §103(a). It is therefore respectfully requested that the Examiner's rejections of appellants' Claims 1-12, 16-18, 23 under 35 U.S.C. §102(b) and 35 USC §103(a) be reversed. Early consideration and favorable action are respectfully requested.

All fees due in relation to filing of this Brief, including the filing and extension of time fees, are being charged on the attached Credit Card payment form. In the event that any additional fees are now due, please charge or credit our deposit account no. 14-1437.

Respectfully submitted,
NOVAK DRUCE DeLUCA & QUIGG, LLP

A handwritten signature in black ink, appearing to read 'Stephen B. Parker', with a long horizontal stroke extending to the right.

Stephen B. Parker, Reg. No. 36,631

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CLAIMS APPENDIX

Claim 1 A store display, comprising:

 a base sheet having a) at least one first side projection tab along a first side of said base sheet and b) at least one second side projection tab along a second side of said base sheet;

 a first frame member having a base-connection channel connectable with said at least one first side projection tab, wherein said first frame base-connection channel or said at least one first side projection tab are resilient and allow the at least one first side projection tab to snap-fit into said first frame base-connection channel during insertion of said at least one first side projection tab in a direction substantially perpendicular to a length of said first frame base-connection channel;

 a second frame member having a base-connection channel connectable with said at least one second side projection tab, wherein said second frame base-connection channel or said at least one second side projection tab are resilient and allow the at least one second side projection tab to snap-fit into said second frame base-connection channel during insertion of said at least one second side projection tab in a direction substantially perpendicular to a length of said second frame base-connection channel; and

 information media including indicia and/or graphics.

Claim 2 The store display of claim 1, wherein said base-connection channels of said first and second frame members include tangs that fit over the respective tabs, and wherein said at least one first side projection tab and said at least one second side projection tab are integrally formed as a unitary part of the base sheet.

Claim 3 The store display of claim 1, wherein said first frame member is mounted generally horizontally over an upper end of the base sheet and said second frame member is mounted generally horizontally under a lower end of the base sheet.

Claim 4 The store display of claim 3, wherein said first and second frame members include media-support channels and said information media includes a display sheet supported within said media-support channels.

Claim 5 The store display of claim 4, wherein at least one of said first and second frame members includes means for hanging said display from a wall or ceiling.

Claim 6 The store display of claim 5, wherein said frame members are formed from extruded plastic.

Claim 7 The store display of claim 6, wherein said base sheet is formed from a stock of sheet material that is cut along one or more side to form the base sheet.

Claim 8 The store display of claim 3, wherein said base sheet is formed from plastic.

Claim 9 The store display of claim 8, wherein said information media includes indicia and/or graphics formed directly on or in said base sheet.

Claim 10 The store display of claim 3, wherein said base sheet is formed from a natural and/or synthetic paper.

Claim 11 The store display of claim 10, wherein said information media includes indicia and/or graphics formed directly on or in said base sheet.

Claim 12 The store display of claim 1, wherein at least one of said first and second frame members includes a second base-connection channel for attachment to a second base sheet.

Claim 13 (Withdrawn) The store display of claim 12, wherein said base-connection channel is formed at an angle of less than 180 degrees from said second base-connection channel.

Claim 14 (Withdrawn) The store display of claim 12, wherein said at least one of said frame members includes a substantially flexible hinge section.

Claim 15 (Withdrawn) The store display of claim 14, wherein said substantially flexible hinge section is co-extruded as an integral section of said at least one of said frame members.

Claim 16 A method of displaying information to customers in a commercial establishment with the display of claim 1, comprising:

providing the information media with information related to products or services sold at the commercial establishment; and

hanging the display from a wall or ceiling proximate the view of customers in the commercial establishment.

Claim 17 The method of claim 16, further including modifying the information displayed by replacing the base sheet with a base sheet having a different size or characteristic.

Claim 18 The method of claim 16, further including modifying the information displayed by replacing at least one of the frame members to support different or additional display elements or information media.

Claim 19 (withdrawn) A method of making the display of claim 1, comprising:
extruding the first frame member via an extrusion die;
extruding the second frame member via an extrusion die; and
forming the base sheet and punching said tabs into said base sheet.

Claim 20 (withdrawn) The method of claim 19, further including forming said base sheet from a plastic material.

Claim 21 (withdrawn) The method of claim 20, further including cutting the base sheet into a generally rectangular sheet and then punching said tabs into said base sheet.

Claim 22 (withdrawn) The method of claim 19, further including forming said base sheet from a paper or cardboard material.

Claim 23 A store display system, comprising:

a) a base sheet having i) at least one first side projection tab along a first side of said base sheet and ii) at least one second side projection tab along a second side of said base sheet;

b) a first frame member mounted generally horizontally over an upper end of the base sheet and having:

means for connecting with said first side projection tabs, wherein said means includes that said first frame member or said at least one first side projection tab is resilient and allows the at least one first side projection tab to snap-fit into said first frame member;

c) said first frame member being made from an integral piece;

d) a second frame member mounted generally along another end of the base sheet and having:

means for connecting with said second side projection tabs, wherein said means includes that said second frame member or said at least one second side projection tab is resilient and allows the at least one second side projection tab to snap-fit into said first frame member;

e) said second frame member being made from an integral piece; and

f) information media including information related to products or services offered for sale at the store.

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EVIDENCE APPENDIX

None

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RELATED PROCEEDINGS APPENDIX

None